

concept of "core" channels and makes available the entire range of Channels from 2 through 69 during the transition period.

Pappas recommends, however, that the 50-kilowatt minimum be coupled with a requirement that licensees of stations that would be assigned less than 50 kilowatts under a strict replication approach, but which are assigned 50 kilowatts, be required to build their DTV facilities to at least 50 kilowatts by a realistic date certain. In Pappas's view, the primary purpose of the 50-kilowatt minimum power level requirement is to assure a minimally-adequate level of service to the public. A build-out requirement will help to achieve this goal.

2. Maximum Allowable Power Level of 1 Megawatt for DTV Operations.

In addition to the 50-kilowatt ERP "floor" proposed above, Pappas believes that the Commission should impose a "ceiling" of 1 megawatt ERP (at an HAAT of 2,000 feet) for DTV stations during the transition period. Such a ceiling should open up the table and make it easier to accommodate the proposed 50-kilowatt floor.

A ceiling of 1 megawatt should have little or no effect on most stations. A number of stations are assigned as much as 5 megawatts under the Broadcasters and FCC Plans. That is far more than a station can realistically utilize with current technology.

8/

**3. Licensees Must have Flexibility
to Modify their Stations' Facilities.**

The proposed 50-kilowatt minimum ERP floor is a starting point to help assure that smaller UHF stations can adequately serve the public and compete in their markets, but it is only a starting point. As the Broadcasters have pointed out, it is important that any table of DTV assignments incorporate the flexibility necessary to adjust to a changing market. Such flexibility is particularly necessary with respect to the modification of NTSC, and the corresponding DTV, facilities in order to enhance service to the public.

8/ This recommendation does not derive from Pappas's self-interest. In fact, a number of the stations in which Pappas has an interest are authorized under the FCC Plan to operate their DTV facilities with more than 1 megawatt of power ERP and would thus stand to lose power under Pappas's recommended approach.

As noted above in Section III.1(a), Pappas has acquired a number of stations operating at low power levels. Pappas fully intends to build those stations into competitive, high-power facilities that will be capable of providing far better service to a much greater number of people. Pappas cannot do so, however, if it is faced with the prospect of a paired DTV channel which will be unable to serve the audience that has been built on the expanded NTSC allotment. In short, it is unreasonable to expect a licensee to build underperforming NTSC facilities into full- power stations, and to invest resources to develop audiences for such stations, if it cannot replicate the coverage of those stations on its paired DTV channels.

Pappas urges the Commission to adopt procedures that will include the flexibility needed to enable broadcasters that acquired lower-powered stations with the intent of building them into higher-powered facilities to replicate the expanded coverage of their improved NTSC facilities on their DTV channels. In that regard, Pappas supports the Commission's proposal to consider modification applications on a case-by-case basis, ^{9/} but also supports the Broadcasters' proposal that applications be considered in the order in which they were filed. Broadcasters

9/ See Sixth Further Notice, at 26-27.

such as Pappas, who have had modification applications on file for months prior to the release of the Sixth Further Notice, and have expended considerable resources in prosecuting those applications, should be given preference over later-filed applicants. While applications to modify NTSC and DTV facilities will, of course, be grantable only to the extent they would not result in interference to other NTSC or DTV facilities, the Commission should strive to provide licensees whose modification applications are granted with the greatest possible certainty that they will be able to construct facilities that will not be subject to materially adverse modification based on the Commission's final decision on its Table of Allotments.

A related concern involves applications for new stations which are currently pending but were filed after October 24, 1991 and are therefore not allotted a DTV channel in the FCC Plan. In some cases such pending applications may be ripe for a grant. Pappas, for example, has applications for construction permits for new stations on channel 44 in Sioux City, Iowa and on channel 23 in Ames, Iowa that it expects will be granted in the near future. Pappas currently intends to build each such station as soon as is practicable after obtaining a construction permit; however, Pappas' ability to obtain financing for the construction of, and to successfully operate, these stations will depend upon

its ability to obtain a paired DTV channel with coverage comparable to that of its new NTSC station. Pappas urges the Commission to adopt procedures to help assure that broadcasters that receive permits for new NTSC stations will be able to replicate their NTSC coverage on a paired DTV channel.

V. PROPOSED PLAN FOR POST-TRANSITION PERIOD

1. Commission Should Adopt Maximization Concept After Transition to DTV is Complete.

Pappas's proposal for a 50-kilowatt minimum ERP floor for DTV allotments and for the flexibility to modify DTV facilities so as to replicate the coverage of improved NTSC facilities, relate to the interim operations during the all-important transition period, which will be the "make-or-break" period for consumer acceptance of DTV in general. During that period, spectrum will be scarce and broadcasters must make compromises in order to help assure the success of DTV. Once the transition to DTV shall have been completed and broadcasters shall have surrendered one of their channels, however, there should be sufficient spectrum for the Commission to adopt a plan that will maximize the ability of each station to serve its public.

Pappas recommends that after the transition shall have been completed, each DTV station should have the right to increase its power to up to 1 megawatt (average ERP), if it is not already operating at that level. This is, in essence, the type of maximization plan proposed by the Commission in its Second Further Notice of Proposed Rulemaking in this proceeding ^{10/} (the "Second Further Notice"). Pappas agrees with the position taken by the Commission in the Second Further Notice that a maximization plan is important "to enable DTV stations to serve geographic areas that encompass their communities of license and surrounding market areas." ^{11/}

Pappas's recommended approach is consistent with the principles set forth by the Commission in its 1961 Notice of Proposed Rule Making in the Matter of Fostering Expanded Use of UHF Television Channels ^{12/} (the "1961 Notice"). In the 1961 Notice, the Commission recognized that the television system had failed to meet its goal of realizing "competitive nationwide and local television services reaching all parts of the country with the largest possible number of program choices and competing

^{10/} 7 FCC Rcd 5379.

^{11/} See Second Further Notice, at 5379.

^{12/} 21 Rad. Reg. (P&F) 1711 (1961).

outlets of local expression," ^{13/} and that that failure was due to "the inability of UHF stations to thrive competitively side by side with VHF stations." ^{14/} Thus in 1961, and in the Second Further Notice thirty-one years later, the Commission recognized the desirability of maximization as a means to provide the greatest number of viewers with the greatest diversity of viewpoints. Pappas urges the Commission to adopt a plan that will effectively maximize each DTV station's facilities after the transition to DTV shall have been accomplished.

VI. LOCATION OF DTV FACILITIES.

1. Broadcasters Should not Suffer Discrimination from Tower Owners in Locating their DTV Facilities.

Although the FCC Plan assumes that a broadcaster's DTV facilities will be co-located with its existing NTSC facilities, the Commission recognized in the Sixth Further Notice that many broadcasters will not be able to locate their DTV operations at the same site as their NTSC station. Consequently, the Commission has proposed that broadcasters be permitted to

^{13/} See 1961 Notice, at 1711.

^{14/} 1961 Notice, at 1712.

locate their DTV facilities at any site within a three mile radius of their NTSC transmitter location.^{15/}

Pappas supports the proposal to permit broadcasters to locate DTV facilities within three miles of existing NTSC facilities. However, Pappas is concerned that a broadcaster that wishes to locate its DTV facilities on a tower owned by a competing broadcaster will be arbitrarily refused use of that tower. To allow tower owners to act in an anti-competitive manner by discriminating against competing broadcasters would thwart the goal of deployment of a viable DTV system as rapidly as is possible. Pappas believes that the Commission should establish a rule prohibiting a tower owner which is a competitor of a broadcaster from discriminating against that broadcaster with regard to location of proposed DTV facilities if it is technically feasible for the broadcaster's proposed facilities to be located on the tower.

^{15/} Sixth Further Notice, at 23.


CONCLUSION

Adoption of the strict replication approach proposed by the Broadcasters would work a substantial injustice to many broadcasters and, more importantly, to the public. Pappas strongly supports the Broadcasters in calling for the use of all channels during the transition period, but proposes that each DTV station receive a minimum allowable power level of 50 kilowatts, and a maximum of 1 megawatt, during the transition. Following the transition, when more spectrum is available, Pappas proposes that each DTV station be allowed to expand to 1 megawatt.

Respectfully submitted,

Pappas Stations Partnership
Pappas Telecasting Companies
Pappas Telecasting of the Carolinas,
a California Limited Partnership
Pappas Telecasting of Lexington, a
California Limited Partnership
Pappas Telecasting of Opelika, a
California Limited Partnership
Pappas Telecasting of Central
Nebraska, a California Limited
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Pappas Telecasting of the Midlands, a
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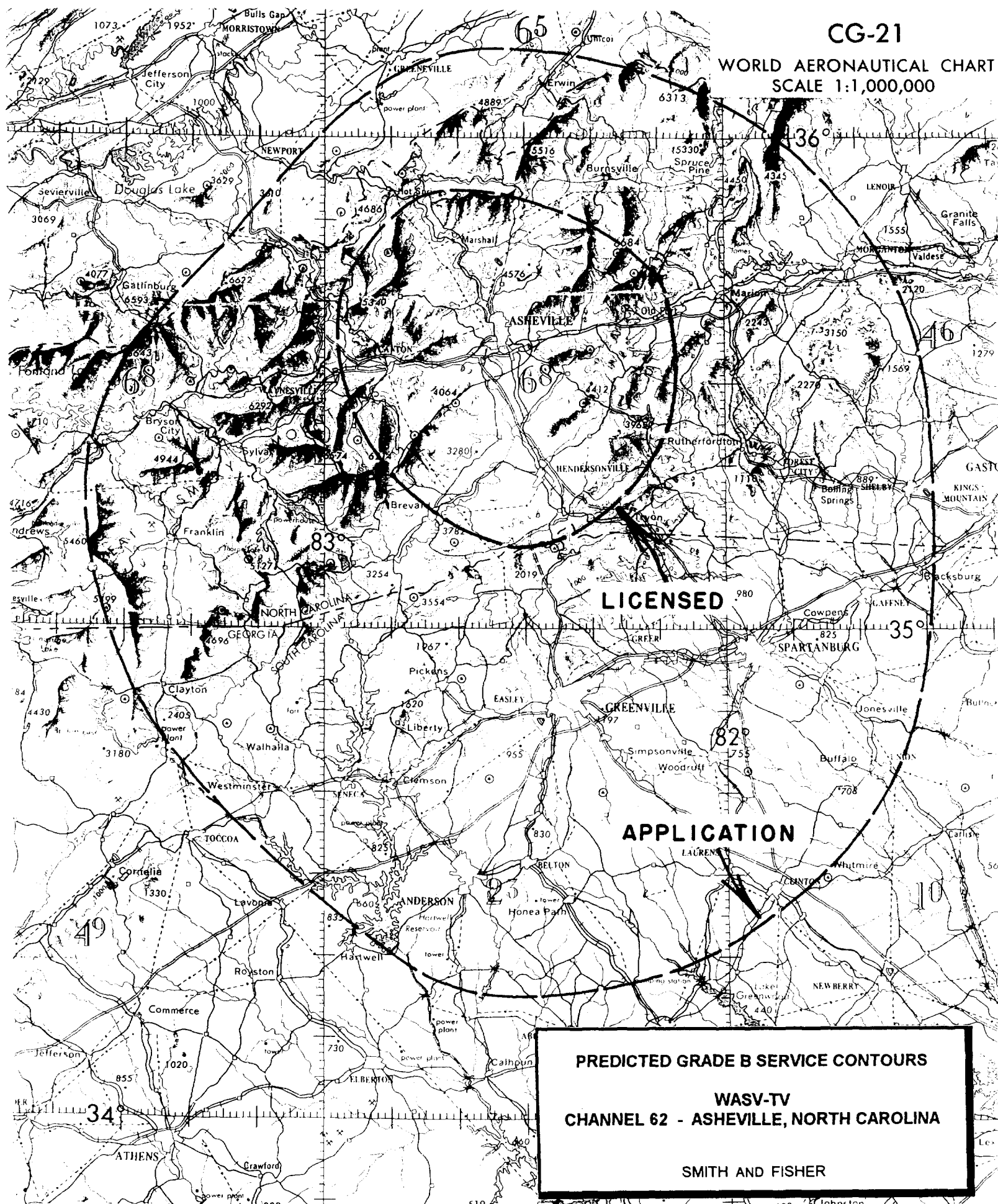
APPENDIX A

Predicted Grade B Service Contours of WASV (TV)

WDC-83549.1

CG-21

WORLD AERONAUTICAL CHART
SCALE 1:1,000,000



PREDICTED GRADE B SERVICE CONTOURS
WASV-TV
CHANNEL 62 - ASHEVILLE, NORTH CAROLINA

SMITH AND FISHER